

APPEAL NO. 021904  
FILED SEPTEMBER 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 24, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, but that the claimant did not have disability. The claimant appeals the disability determination, arguing that the respondent (carrier) did not contest the issue of disability in the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) and that the determination of disability is against the great weight and preponderance of the evidence. The appeal file does not contain a response from the carrier.

DECISION

Affirmed.

The claimant had the burden to prove that he had disability as defined by Section 401.011(16). Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer noted that the claimant's testimony concerning his pain and limitations following the injury was not credible. We are satisfied that the evidence sufficiently supports the hearing officer's determination that the claimant did not have disability resulting from the compensable injury sustained on \_\_\_\_\_.

The claimant additionally contends on appeal that the TWCC-21 did not dispute disability. In evidence is the carrier's TWCC-21 dated "01/24/02" stating that "the carrier denies an injury occurred within the course and scope of employment pursuant to section 406.031 of the Act. The carrier denies all liability, compensability, medical and income benefits resulting from this allege[d] injury/accident on \_\_\_\_\_." The sufficiency of the TWCC-21 to dispute disability was not an issue at the CCH. It is well-settled that the Appeals Panel is limited to issues developed below and that we will not consider an argument raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 011288, decided July 19, 2001. Nonetheless, the language of the TWCC-21 in evidence would be sufficient to contest disability.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Susan M. Kelley  
Appeals Judge